

**REMARKS**

Applicant has now had the opportunity to carefully consider the Examiner's comments set forth in the Office Action of June 30, 2005. In response, Applicant has amended certain claims (claim 20), canceled other claims (claims 21-30), and added new claims (claims 31-35). Applicant desires consideration of the enclosed amendment.

**The Office Action**

Examiner required an election of a single species for prosecution and separated the pending claims into Species I (claims 1-20) and Species II (claims 21-30). Applicant affirms the election of Species I. New claims 31-35 are generic claims readable on Species I and II. Upon the allowance of a generic claim, Applicant desires consideration of claims to additional species which are written in dependent form or include all the limitations of an allowed generic claim.

**35 USC 103(a) Rejection**

In paragraph 5 of the Office Action, claims 1-20 were rejected as unpatentable over Spector '409 in view of Spector '707 and further in view of Kassab '200.

As the Examiner is aware, the present application is concerned with a simulated decal air freshener, specifically the kinds of products applied onto a flat surface. The present application describes a planar air freshener resembling a parking or membership decal. Applicant's invention provides for an unobtrusive air freshener which is easily fixed in place and which can meter a fragrance or abate odors until exhaustion.

The present application describes and claims a multiple layer air freshener having a flexible static cling sheet, a static cling free sheet, an adhesive sheet, a planar fragrance member, and a metering sheet (claim 1). The five layers provide for mounting of the air freshener, simulation of a decal, a fragrance, and a method for metering the fragrance at a selected rate. The metering sheet includes a portion in contact with the fragrance member. The metering sheet further provides

passages, i.e. a multiplicity of holes, to allow passage of the scent or fragrance (i.e. claims 1, 2 and 20). Dependent claims 3-15 and 19 include further limitations on one or more layers of the air freshener. Claims 16-18 claim the temperature sensitive nature of the fragrance member which allows for varying rates of fragrance emittance.

The cited references do not teach the above described structures. The cited references, even if combinable, would not result in the air freshener described above. The '707 reference does not describe a metering sheet, but rather discloses a facing sheet 13 that contains "good wicking properties". The facing sheet can be soaked with a rupturable capsule 15 or by a rupturable weak film (col. 4 , lines 13-18). The soaked facing sheet then gradually exudes the fragrance into the atmosphere. The '707 patent further describes the microporous sheet [13] "may be factory-impregnated with the liquid fragrance and covered by a peel-off sealing film, so that the unit is activated by removing the sealing film." (col.4, lines 18-21). Thus, Applicants' structure is different from the cited references. Applicants do not include a rupturable capsule or weak film containing a supply of volatile fragrance ('707). The rupturable capsule described by Spector '707 merely allows the volatile fragrance to remain encapsulated until release is desired. Once ruptured, the volatile fragrance is not metered through a metering sheet including a multiplicity of holes therethrough.

It appears that the Office Action is based upon a reading of Applicants' specification and use of these teachings in order to support the obviousness rejection. Such a basis of rejection is improper under *In re Ruff*, 256 F.2d 590, 596, 118 USPQ 340, 346 (CCPA 1958). One may not use the teachings of an application to establish equivalency of structures in a particular application. The equivalency of structures in addressing a particular problem must come from the prior art, not the application being examined.

It is respectfully submitted that claims 1-20, and 31-35 are allowable over the cited references for at least the reasons stated above.

It is respectfully requested that the Examiner reconsider and withdraw the rejection.

Respectfully submitted,

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Date

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<u>September 28, 2005</u>

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